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23164 7590 04/16/2010 LEON R TURKEVICH 2000 M STREET NW 7TH FLOOR WASHINGTON, DC 200363307				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* LEWIS DEAN DODRILL, DAVID WILLIAM GEEN,  
GEETHA RAVISHANKAR, SATISH JOSHI, RYAN ALAN DANNER,  
SUSAN HARROW BARBAN, STEVEN J. MARTIN,  
and SWAMINATHAN RAVISHANKAR

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Appeal 2009-002905  
Application 09/605,848  
Technology Center 2400

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Decided: April 16, 2010

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Before JOHN A. JEFFERY, LANCE LEONARD BARRY, and CAROLYN  
D. THOMAS, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

The Patent Examiner rejected claims 1, 3, 5-18, 20, 22-28, 30-39, and 41. The Appellants appeals therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

## INVENTION

The Appellants describe the invention at issue on appeal as follows.

[T]he present invention provides a method for inter-process communication between non-persistent application instances. The method includes establishing a first non-persistent application instance serving a first party and establishing a second non-persistent application instance serving a second party. An HTML [i.e., HyperText Markup Language] page is generated, in the first application instance, having instructions for a persistent browser instance, having received the HTML page, to initiate a new application session for the second party. (Spec. 4-5.)

## ILLUSTRATIVE CLAIM

12. A method for inter-process communication between non-persistent application instances, the method comprising:
- establishing a first non-persistent application instance serving a first party;
  - establishing a second non-persistent application instance serving a second party; and
  - generating an HTML page, originating in the first application instance, having instructions for a persistent

browser instance in use by the second party, having received the HTML page, to interrupt a present application session having been generated by the second application instance on behalf of the second party and initiate a new application session for the second party.

#### PRIOR ART

Cave	US 5,958,014	Sep. 28, 1999
Jindal	US 6,327,622 B1	Dec. 4, 2001
Maurille	US 6,484,196 B1	Nov. 19, 2002

#### REJECTIONS

Claims 1, 3, 5-7, 9, 12-14, 17, 18, 20, 22-24, 27, 28, 30, 32-34, 36, 39, and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Maurille and Jindal.

Claims 8, 10, 15, 16, 25, 26, 35, and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Maurille, Jindal, and Official Notice.

Claims 11 and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Maurille, Jindal, and Cave.

## ISSUE

The Examiner admits that "Maurille fails to specifically disclose that the application session of the second party is established by another application instance distinct from the first application instance." (Answer 5.) He finds that "Jindal teaches using multiple instances of an application spread across a plurality of servers in order to balance the load of client requests (at least Col 2, Lines 41-57)" (*id.*), however, and concludes that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to use multiple instances of the server application to serve sessions from different clients . . . ." (*Id.*) The Appellants make the following argument.

Even if Maurille were modified by employing the teachings of Jindal, the modification would not result in the claimed subject matter, since the combination does not teach or suggest the HTML page originating in the first application instance, requesting interruption of a present application session of the second party, established by another application instance distinct from the first application instance as claimed.

(App. Br. 6.) Therefore, the issue before us is whether the Appellants have shown error in the Examiner's finding that teachings from Maurille and Jindal would have suggested establishing a first non-persistent application instance serving a first party; establishing a second non-persistent application instance serving a second party; and generating an HTML page to interrupt a present application session having been generated by the second application instance on behalf of the second party and initiate a new application session for the second party.

## LAW

"A rejection based on section 103 clearly must rest on a factual basis. . . ." *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *Id.* "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991)).

## FINDINGS OF FACT ("FFs")

1. Maurille's invention "provides integrated combinations of threaded instant messages, open display bulletin boards, private bulletin boards, threaded e-mail, explicit acknowledgment of messages, and conferencing, whisper and talk modes." (Abstract, ll. 1-5.) The Examiner admits, however, that the reference "discloses only a single server application 114 (application instance)." (Answer 13.)

2. Jindal describes "a system and methods . . . for balancing client (e.g., user) requests among multiple instances of an application (e.g., application program or replicated service) in accordance with a selected policy. In this embodiment, each instance of the load-balanced application executes on a separate computer server." (Col. 2, ll. 41-46.)

## ANALYSIS

The Examiner admits that the Maurille discloses only a single application instance. (FF 1.) Consequently, we agree with the Appellants that the single instance "controls all messaging sessions of all users via a database 108 (see Maurille column 6, lines 44-57)." (Appeal Br. 6.) Jindal describes multiple instances of an application, each instance of which executes on a separate computer server. (FF 2.)

We also agree with the Appellants that "if Maurille was combined with Jindal to include multiple instances of the Maurille's server application 114, there would merely be another server application 114 and associated database 180. The first and second instances would be distinct and would have no interrupt relation with respect to each other (such as the interruption of the session of the second party as claimed)." (Appeal Br. 6.) Instead, "any interruption would occur within the same instance and between sessions . . . ." (*Id.* at 8.)

The Examiner does not allege, let alone show, that the addition of Official notice or Cave cures the aforementioned deficiency of Maurille and Jindal.

## CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have shown error in the Examiner's finding that teachings from Maurille and Jindal would have suggested establishing a first non-persistent application instance serving a first party; establishing a second non-

persistent application instance serving a second party; and generating an HTML page to interrupt a present application session having been generated by the second application instance on behalf of the second party and initiate a new application session for the second party.

DECISION

We reverse the rejections of claims 1, 3, 5-18, 20, 22-28, 30-39, and 41.

REVERSED

rwk

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